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No. 00 960

In the Supreme Court of the United States

EDWIN F. VIRGIN, SR., et al.,
Petitioners,

v.

COUNTY OF SAN LUIS OBISPO, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

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33 pp

QUESTION PRESENTED

Is due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States denied when state courts summarily dismiss concurrent jurisdiction federal constitutional claims against local governments under 42 U.S.C. § 1983, for takings, equal protection, and substantive and procedural due process violations, under a standard of review that "expressly requires" that the state court (a) "look only to the evidence supporting" the governmental action, (b) discard "evidence unfavorable" to the government, (c) accept only those inferences from the evidence as drawn by the government, and (d) disregard "even uncontradicted evidence"?

PARTIES TO THE PROCEEDING

Petitioners

Edwin F. Virgin, Sr., Susan S. Virgin, husband and wife, and Edwin F. Virgin, Jr. Petitioners are individuals and have no corporate affiliations.

Respondents

County of San Luis Obispo, a political subdivision of the State of California, Board of Supervisors of the County of San Luis Obispo, Subdivision Review Board of the County of San Luis Obispo.

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OPINIONS BELOW

The opinion of the Court of Appeal of the State of California, Second Appellate District, Division Six, is unreported (App. B, *infra.*, 2a-13a). The denial of the Petition for Review in the Supreme Court of California is unreported (App. A, *infra.*, 1a). Related litigation, which is not the subject of this Petition, is reported by the United States Court of Appeals for the Ninth Circuit in *Virgin v. County of San Luis Obispo*, 201 F.3d 1141 (9th Cir., 2000).

JURISDICTION

The State Court of Appeal filed its unpublished Opinion on June 26, 2000. The Supreme Court of California filed its denial of the Petition for Review *En Banc* on September 13, 2000.

Petitioners invoke the jurisdiction of this Court pursuant to Article III, Section 2, of the Constitution of the United States, for Petitioners' claims arising under the Constitution and Laws of the United States, 42 U.S.C. § 1983, the due process, equal protection, and takings clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States, and federal common law under *Packer v. Bird*, 137 U.S. 661, 669, 11 S.Ct. 210, 211, 34 L.Ed. 819 (1891).

The United States Court of Appeals for the Ninth Circuit, in dismissing Petitioners' claim of direct federal court jurisdiction, opined: "The appropriate remedy for the appellants is to litigate their claims through the state court system and then file a petition for certiorari for the U. S. Supreme Court to review the state court decision with regard to these federal land patents." *Virgin v. County of San Luis Obispo*, 201 F.3d 1141, at 1145 (9th Cir., 2000).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the Constitution of the United States, provides that:

> "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the Constitution of the United States, applicable to County Respondents through the Fourteenth Amendment, provides that no person shall "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

42 U.S.C. § 1983 protects Petitioners from County Respondents' actions depriving Petitioners of "any rights, privileges, or immunities secured by the Constitution and laws" of the United States.

In *Packer v. Bird* 137 U.S. 661, 669, 11 S.Ct. 210, 211, 34 L.Ed. 819 (1891), this Court wrote that the incidents or rights which attach to the ownership of property "conveyed by the government will be determined by the states, subject to the condition that their rules do not impair the efficacy of the grants or the use and enjoyment of the property by the grantee." 414 U.S., at 677-678, 94 S.Ct., at 782.

STATEMENT OF THE CASE

Petitioners brought suit in state court against the County of San Luis Obispo, the Board of Supervisors of the County of San Luis Obispo, and the Subdivision Review Board of the County of San Luis Obispo, California ("County Respondents"), based upon state law claims joined with federal claims against the County Respondents for the violation of 42 U.S.C. § 1983, for takings, equal protection, substantive and procedural due process, and unconstitutional condition violations of the Fifth and Fourteenth Amendments to the Constitution of the United States.

The state court of appeal dismissed all of Petitioners' state law and federal law claims based upon evidentiary rules included within a standard of review applied to the conduct of the County Respondents. The state appellate court's standard:

> ". . .requires that we look only to the evidence supporting the prevailing party. (*Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241.) We discard evidence unfavorable to the prevailing party as not having sufficient verity to be accepted by the trier of fact. (*Ibid.*) Where the trier of fact has drawn reasonable inferences from the evidence, we have no power to draw different inferences, even though the different inferences may be reasonable. (*Ibid.*) The trier of fact is not required to believe even uncontradicted evidence. (*Ibid.*)" (App. B, 8a)

Applying this particularly draconian version of the substantial evidence test to the County's conduct, the state appellate court in effect ruled that when a property owner

raises federal constitutional challenges against a local government, such challenges will be resolved by looking only to the evidence which supports the local government's actions, discarding evidence unfavorable to the action of the local government as lacking sufficient verity to be accepted by the trier of fact, accepting all evidentiary inferences drawn by the local government in making its own decision, while being completely free not to consider even uncontradicted evidence supporting the claims.

ARGUMENT FOR GRANTING WRIT

ARGUMENT 1

Federal "constitutional torts" cannot be fairly adjudicated consistent with due process if the trier of fact is required to consider only factual evidence and inferences which favor the government and exclude all others.

Petitioners respectfully submit that the standard of review applied by the state appellate court denies Petitioners' due process rights to fairly litigate federal constitutional claims where state courts have concurrent jurisdiction, since it would be impossible under such a standard to ever prove the violation of federal constitutional and civil rights. Under this standard, a local government is always right since it alone deems itself the prevailing party in its own quasi-judicial proceedings and ministerial actions, and can do essentially whatever it chooses with regard to private property and other federal constitutional rights. Due process of law cannot be served under such a prejudicial standard of review in the adjudication of federal constitutional rights.

A. Takings claims are intensely factual determinations.

Since *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978), this Court has consistently and candidly acknowledged that the question of what constitutes a taking under the Fifth Amendment has "proved to be a problem of considerable difficulty." *Id.* 57 L.Ed.2d at 648. This Court has acknowledged that there is no "set formula" for determining when "justice and fairness" require that economic injuries caused by public actions be compensated by the government. Indeed, this Court has recognized a consistent pattern that adjudicated takings claims depends largely upon the particular circumstances of each case, *Id.*; conducting "essentially ad hoc, factual inquiries", *Lucas v. South Carolina Coastal Council*, 505 U.S. 1015, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992); and require "complex factual assessments of the purposes and economic affects of government actions," *Yee v. City of Escondido*, 503 U.S. at 523, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992).

The three takings factors identified by this Court in *Penn Central* as particularly significant are dependant upon a fair and balanced factual inquiry. The factor concerning the nature of the governmental action is inherently fact driven; the economic impact upon private property rights factor is a factual inquiry. The extent to which a government's action has interfered with distinct and reasonable investment-backed expectations must also be considered a question requiring ascertaining true facts through the reasoned balancing of evidence. A fourth factor in takings analysis, whether such actions advance a legitimate governmental interest, also require factual inquiry and discretion to weigh conflicting evidence. *City of Monterey v. Del Monte Dunes* ___ U.S. ___, 119 S.Ct. 1624, 143 L.Ed.2d 882, 905 (1999).

When, as here, Petitioners challenge the imposition of conditions upon a lot line adjustment and other government action which retroactively requires that all underlying parcels be merged as a condition of allowing one family member to sell to another 160 acres of adjacent land (*see* shaded area, App. C, 14a and App. D, 15a, and the "Adjustment Line" on App. E, 16a), issues under this Court's *Nollan* and *Dolan* decisions also require factual inquiry which cannot be adjudicated under the state appellate court's standard of review. *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994); *Nollan v. California Coastal Comm'n*, 483 U.S. 815, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987).

When a state court exercises concurrent jurisdiction over federal takings claims, it is inconceivable that such claims can be resolved consistent with due process based solely upon a factual "prism" which excludes any light cast by evidence favorable to the property owner.

B. Section 1983 actions are intensely factual determinations.

This Court's decision in *City of Monterey v. Del Monte Dunes*, ___ U.S. ___, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999), recognized the fact-intensive nature of adjudicating a variety of "constitutional torts" including claims under section 1983.

This Court's decision in *City of Monterey v. Del Monte Dunes* recognized that in section 1983 actions and other "constitutional torts," the trier of fact, whether judge or jury, is presented with conflicting evidence to be decided according to its preponderance. Implicit in the rationale of the *Del Monte Dunes* decision is an opportunity to present and have

weighed evidence which is contrary to that of the government.

One can hardly imagine a tort system where the adjudication is limited to the inferences and evidence chosen by the tort defendant. These important constitutional guarantees should not be dismissed under a standard of review that excludes the consideration of any evidence or inferences which support the property owner, even if uncontradicted. When such federal claims are adjudicated by state courts exercising concurrent jurisdiction, due process must require something more than merely weighing the evidence and inferences chosen by the governmental agency while disregarding the favorable and unrebutted evidence supporting the property owner.

C. Equal protection determinations are intensely factual determinations.

This Court's *per curiam* opinion in *Village of Willowbrook v. Olech*, ___ U.S. ___, 120 S.Ct. 1073, ___ L.Ed.2d ___ (2000), acknowledged that plaintiffs can allege an equal protection violation by asserting that state action was motivated solely by a spiteful effort unrelated to any legitimate state objective. This Court acknowledged that where a plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment, a claim for the violation of equal protection under section 1983 is adequately stated.

The goal of the equal protection clause of the Fourteenth Amendment, as explained in *Willowbrook*, is to secure to every person within the state's jurisdiction against intentional and arbitrary discrimination, "whether occasioned

by express terms of a statute or by improper execution through duly constituted agents." *Id.* at 1075.

Under this state appellant court standard, there could never be a successful proof of such allegations. The correct adjudication of section 1983 equal protection claims is frustrated when state courts apply a standard of review that allows them only to consider evidence and inferences favorable to the government, while disregarding all other evidence, even if undisputed, which supports the equal protection claim.

ARGUMENT 2

The unconstitutional standard of review utilized by the state court of appeal was prejudicial to Petitioners' claims and denied due process of law.

The state court of appeal's exclusive use of a constitutionally defective standard of review infects the court's entire decision, since the only facts set forth in the opinion are those facts favorable to County Respondents which have been screened by the express evidentiary requirements of the standard of review.

Petitioners recognize that this Court cannot be mired in the voluminous factual record below with regard to Petitioners' claims. Nonetheless, it may be helpful to give some examples of the type of evidence, much of it undisputed, that the court of appeal did not consider because of its standard of review.

Prior to purchasing the property, Petitioners determined under County policies in effect in 1977 that they

were buying a number of underlying parcels, and that these parcels were further divided by two county road segments; that a new Williamson Act Contract could be entered into less than the minimum acreage, that the issuance of the 1977 certificates of compliance would not affect any underlying parcels. These facts were confirmed in writing by Edwin, Sr. and Petitioners' realtor to the County. This gave rise to a legitimate investment-backed expectation that Petitioners were acquiring multiple legal parcels which had not been merged.[1]

Instead of attempting to "create" new legal parcels, Petitioners merely sought to adjust the lines between existing parcels, to which Petitioners always were entitled.

In processing the 1977 certificates of compliance, the issue of the 1973 lot line adjustment merging all underlying parcels was considered by the County, and rejected, and based upon the advice of the County District Attorney, the County honored the request for certificates of compliance.[2] In 1977 there was a County policy recognizing County roads as dividing legal parcels and creating separate legal parcels on each side of the road based upon the advice of the County's District Attorney.[3]

The unrebutted appraisal evidence indicates that the fair market value of Petitioners' property has been

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[1] Clerk's Transcript (hereinafter C.T.), C.T. 1611, 1668, 1742, 1706, 1690, 1645, M.F. #24; Virgin, Sr. Dec., ¶¶ 2-7, 8, Exhs. "A"-"D;" Susan Virgin Dec., 2-8, Exhs. "A"-"D;" Virgin, Jr. Dec., ¶¶ 2-5, Exhs. "A"-"D;" White Dec., ¶¶ 2-8, Exhs. "A"-"E;" Rogoway Dec., ¶¶ 7-12.

[2] C.T. 1632, M.F. #112; Kelly Depo., 23:8-22.

[3] C.T. 1623, M.F. #113; ; Kelly Depo., 26:13-24, 27:2-13.

substantially reduced by the County's findings that it contained only one or two parcels.[4] The County's actions on the lot line adjustment application have impaired the marketability of Petitioners' property, their ability to sell the property and even obtain title insurance.[5]

The standard of review used by the state appellate court resulted in not even considering the unrebutted testimony of the predecessors-in-interest and the surveyor handling a prior lot line adjustment that there was never a voluntary intent to merge underlying parcels, nor was that the County practice at the time.

Undisputed evidence leads to the conclusion that the Petitioners were singled out for discriminatory treatment. The persons designated as most knowledgeable by the County testified extensively about how other similarly situated properties that involved Williamson Act, federal land patents, portions of patents, smaller than minimum parcel size, and previously issued certificates of compliance, were treated in a manner differently than how Petitioners were treated on the same routine issues,[6] and that the County *never* retroactively applies state map act or county ordinance amendments to previously recorded maps for other property owners.

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[4] C.T. 1612, 1632, 1669, M.F. #28; Schenberger Dec., ¶¶ 3-7; Virgin Sr. Dec., ¶ 17; Susan Virgin Dec., ¶ 17.

[5] C.T. 1612, 1773, M.F. 29; Virgin, Jr. Dec., ¶¶ 19, 20, 21, 22, 23, 24, 25; Irot Dec., Exh. "A".

[6] C.T. 1537-1553; M.F. ##25, 67, 84, 94, 95, 96, 97, 98, 99, 101, 104, 115, 116, 117, 119, 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 150, 151, 152, 153, 154, 155, 156.

The state appellate court's standard of review also causes it to disregard all evidence involving whether County Respondents' actions advanced any legitimate public purpose, including ignoring a determination by the County Agricultural Commissioner that the realignment of lot lines would meet the minimum qualifying acreage for the agricultural preserve program,[7] and would not result in significant impacts to agriculture.[8] Such lot line adjustments of existing legal parcels provides benefits such as financing and estate planning for agriculturalists.[9] Indeed, after on-site inspections, the County's Agricultural Commissioner noted at least ten beneficial impacts from Petitioners' lot line adjustment proposal. No legitimate state interest was advanced by treating the Petitioners differently.[10] The County's environmental review found no adverse impacts from the proposed lot lines.

The refusal to consider any opposing evidence leads the state appellate court to blame the loss of Petitioners' property rights on their own deed conveyances, contrary to the express provisions of California Civil Code § 1093, that the consolidation of separate legal descriptions into one or more deeds "does not operate in any manner to alter or affect the separate and distinct nature of the real property so described in the subsequent single instrument of conveyance. . . ." The only exception under the state statute is when there is an intent expressed in the deed to merge underlying parcels. However,

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[7] C.T. 1615, M.F. #53; Cty. Exh. Pkg., Exh. "A," p. 591.

[8] C.T. 1616, M.F. #55; Cty. Exh. Pkg., Exh. "A," p. 617.

[9] C.T. 1616, M.F. #56; Cty. Exh. Pkg., Exh. "A," p. 617 (Ag Commissioner memo).

[10] C.T. 116-117, Cty. Exh. Pkg., Exh. "A", p. 619-621.

the Court's standard of review precluded the consideration of any such unrebutted evidence that Petitioners never intended to, nor was there any controlling provision of state law, which operated to merge their underlying parcels.

CONCLUSION

There is a clear need for this Court to set certain minimum constitutional standards according to which federal constitutional cases can be fairly decided by state courts. The recognition of minimum due process standards would discourage forum shopping to a court with the most favorable standard of review and evidentiary requirements. Most importantly, however, it would correct the obvious injustice which such a standard imposes upon property owners who seek in good faith to litigate their constitutional complaints against local governments.

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APPENDIX A

IN THE SUPREME COURT OF CALIFORNIA

[Filed September 13, 2000]

S090515

EDWIN F. VIRGIN SR., *et al.*,
Plaintiff and Appellant,

v.

COUNTY OF SAN LUIB OBISPO,
Defendant and Respondent.

Court of Appeal, Second Appellate District,
Division Six - No. B125211

En Banc

Petition for review DENIED.

/s/_____
Chief Justice

APPENDIX B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION SIX

[Filed June 26, 2000]

2d Civil No. B125211
(Super. Ct. No. CV79017)
(San Luis Obispo County)

EDWIN F. VIRGIN, SR., *et al.*,
Plaintiffs and Appellants,

v.

COUNTY OF SAN LUIS OBISPO, et al.,
Defendants and Appellants.

Adjoining property owners jointly applied to the county for a lot line adjustment. The adjustment would divide their land into eight legal parcels. They claimed that their property consisted of 13 or 14 legal parcels created by federal patents. The county denied the application on the ground that the applicants' property is comprised of only two legal parcels.

The applicants filed a petition for writ of mandate and complaint for damages. The trial court found there were only four legal parcels and ordered the county to consider a lot line adjustment for four parcels. The court thereafter granted summary judgment in favor of the county on the causes of action for damages. Both the property owners and the county appeal. The property owners contend the trial court erred in limiting them to only four parcels. The county contends the trial court erred in ordering that the county consider an application for more than two parcels. We agree with the county.

FACTS

Edwin F. Virgin, Sr. ("Edwin, Sr.") and his wife, Susan S. Virgin, own approximately 720 acres in San Luis Obispo County ("the county"). Their son, Edwin F. Virgin, Jr. ("Edwin, Jr.") owns an adjoining parcel of approximately 510 acres. Both parcels are undeveloped agricultural land.

The parcels were once part of a larger ranch granted to the Virgins' predecessor-in-interest. The grant was made by a number of federal land patents in the 1800's. The ranch remained as a single holding until the 1970's.

In 1972, the then owners of the ranch, Edwin and Catharina Shroeder, signed a Williamson Act contract pursuant to the California Land Conservation Act of 1965 (Gov. Code, § 51200 et seq.)[1] Under the contract the Shroeders agreed to preserve the land for agricultural use in

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[1] All Statutory references are to the Government Code unless otherwise stated.

exchange for a reduction in property taxes.

The contract provided, in part: "Any act by Owner which results in creation of a parcel or parcels of land, within the above-described premises, smaller than the minimum lot size prescribed by the zoning then on said premises shall constitute a violation of this contract . . . . " The zoning at the time the contract was signed provided for a 640-acre minimum parcel size.

In 1973, the Shroeders applied to the county for a lot line adjustment. In accordance with the county's procedure for a lot line adjustment, the Shroeders recorded a parcel map. The map divided the ranch into two parcels labeled A and B.

The Virgins' properties consist of all of parcel B. The Virgins contend that parcel B is composed of "at least" 13 lots created by federal patents.[2] Of the 13 patents, 6 lie in part outside the boundary of the Virgins' parcels.

Robert and Lynn Strahan are the Virgins' immediate grantors. Prior to granting parcel B to the Virgins, the Strahans obtained two certificates of compliance, making it possible to convey all of parcel B as two separate lots. The lots were divided by an existing county road that cut through parcel B diagonally. The certificates were issued under a then existing county policy that a county road acts as a boundary between parcels.

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[2] In the proceedings below the Virgins sometimes contended there are 13 and sometimes contended there are 14 lots created by federal patents underlying parcel B.

The Strahans conveyed the parcel lying north and west of the county road to Edwin, Jr. They conveyed the parcel lying south and east of the county road to Edwin, Sr. and his wife, Susan.

The county road, and thus the boundary between the Virgins' parcels, cut through a number of the original federal patents. After the conveyance to the Virgins, only four of the original patents underlying the Virgins' parcels remained intact; that is, not intersected by a boundary line. One of these was under Edwin, Jr.'s parcel and three were under his parents' parcel.

After the conveyances the Virgins entered into new Williamson Act contracts. These contracts, like the previous one covering the entire ranch, prohibit "creation of a parcel or parcels of land . . . smaller than the minimum lot size prescribed by the zoning."

In 1993, the Virgins jointly applied to the county for a lot line adjustment. The proposed adjustment would create eight parcels; five on Edwin, Jr.'s parcel and three on his parents' parcel. The smallest parcel would be 100 acres and the largest parcel would be 353 acres. The zoning requires a 640-acre minimum parcel size.

The county's subdivision review board denied the application. The Virgins appealed to the board of supervisors. The board of supervisors also denied the application on recommendation of its planning staff. The board took the position that the original parcels created by federal patents were eliminated in 1972 when the parcel map was filed showing the Virgins' land to be a single parcel B.

That parcel was later divided in two by conveyances pursuant to certificates of compliance. Because there are only two parcels, the land cannot be divided into eight parcels by a lot line adjustment. In addition, any such adjustment would violate the Williamson Act contracts and current zoning.

The Virgins filed a petition for writ of mandate and complaint for damages. The petition alleged that the county abused its discretion and acted in an arbitrary and capricious manner in denying the Virgins' application. More specifically, the Virgins alleged that the county erred in finding that the Virgins' property consisted of only two legal parcels instead of fourteen, and in finding that the adjustment would violate the Williamson Act contracts and county ordinances. The Virgins also sought damages for violation of their civil rights under color of law. (42 U.S.C.A., § 1983.) The Virgins amended their complaint to add other causes of action for damages including inverse condemnation and slander of title.

The trial court concluded that prior to 1972, the Virgins' land contained eight parcels; the 1972 lot line adjustment did not extinguish the original parcels; and that there are only four of the original parcels that were not divided by conveyances, one on Edwin, Jr.'s parcel and three on his parents' parcel. The four patents cover only 390 acres out of a total of 1240 acres owned by the Virgins. The conclusion that there are four legal parcels created by the surviving patents left 850 acres not included in any legal parcel. The court also concluded that the Williamson Act contracts did not prohibit the lot line adjustment, recognizing there are other ways to enforce those contracts. The trial court remanded the matter to the board of supervisors for

reconsideration of the Virgins' application in light of its conclusions. The board approved the Virgins' amended application for four parcels. The trial court accepted the county's writ return, finding that the county had complied with the writ of mandate.

The trial court granted the county's motion for summary judgment on the Virgins' causes of action for damages. The Virgins appeal and the county cross-appeals.

DISCUSSION

I

Section 66412, subdivision (d), provides in part: "This division [on subdivisions] shall be inapplicable to: [¶]. . .[¶] (d) A lot line adjustment between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created, provided the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to local zoning and building ordinances . . . . "

San Luis Obispo County Real Property Ordinance, section 21.02.030 provides: "A lot line adjustment shall not be approved or conditionally approved unless the new parcels resulting from the lot line adjustment will conform with the county's zoning and building ordinances. The criteria to be considered includes, but is not limited to, standards relating to parcel design and minimum lot area. These criteria may be

considered satisfied if the resulting parcels maintain a position with respect to said criteria which is equal to or better than such position prior to approval or conditional approval of the lot line adjustment."

Our task on appeal is to determine whether the county's decision is supported by the findings and whether the findings made by the county are supported by substantial evidence. (Code Civ. Proc., § 1094.5, subds. (b)-(c).)

The substantial evidence rule requires that we look only to the evidence supporting the prevailing party. *(Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241.) We discard evidence unfavorable to the prevailing party as not having sufficient verity to be accepted by the trier of fact. *(Ibid.)* Where the trier of fact has drawn reasonable inferences from the evidence, we have no power to draw different inferences, even though different inferences may also be reasonable. *(Ibid.)* The trier of fact is not required to believe even uncontradicted evidence. *(Ibid.)*

II

The county relies on section 66499.20 1/2. That section states in part, "The filing of the . . . parcel map shall constitute legal merging of the separate parcels into one parcel and the resubdivision of such parcel . . . ." The county points to the 1973 parcel map showing the Virgins' parcels as a single parcel B.

The Virgins argue that section 66499.20 1/2 does not apply. They point out that the 1973 parcel map was recorded prior to the enactment of section 66499.20 1/2 in 1977. The

county responds that the section was applied to a parcel map recorded prior to its enactment in *Gomes v. County of Mendocino* (1995) 37 Cal.App.4th 977. We cannot place much reliance on *Gomes,* however, because the application of the statute to parcel maps recorded prior to its enactment was not an issue discussed in the case. An opinion is not authority for issues not considered. *(Contra Costa Water Dist. v. Bar-C Properties* (1992) 5 Cal.App.4th 652, 660.) Nevertheless, there is nothing on the face of section 66499.20 1/2 that limits its application to parcel maps recorded after its enactment.

Even assuming section 66499.20 1/2 does not apply here the result is still the same. The parcel map recorded in 1973 shows two large parcels, A and B. It does not show the location of nor make any reference to the existence of the federal patents that the Virgins claim have remained as separate parcels. It is impossible to tell by looking at the map which of the patent lines were being adjusted and which were intended to remain.

Parcel B was conveyed as a whole without regard to the federal patents. Parcel B was then divided in half and each half was conveyed to different parties. The dividing line between the parcels was not made with reference to any of the underlying patents. Instead, the dividing line was a county road that ran through a number of the parcels described by the patents.

It is inconsistent for a property owner to make conveyances that traverse lots created by federal patents and still claim that the lots created by the patents remain. When the owners of the ranch finished making conveyances only

four of the underlying lots created by federal patents remained undisturbed.

The trial court's ruling is based on the theory that the four undisturbed patents remain as four separate legal parcels. But, as the Virgins themselves point out, the area covered by the four patents is only 390 acres out of a total of 1240 acres owned by them. Thus the ruling left the Virgins with 850 acres that had no legal status and could not be sold, leased or financed.

The only reasonable conclusion is that the conveyances made by the Virgins' predecessors-in-interest left them with only two legally recognized parcels that cover the entire of their property. Those are the parcels for which the county issued certificates of compliance.

The Virgins' case is based on the apparent belief that parcels created by federal patents are indestructible and can be divided by conveyance with each portion becoming a legally recognized parcel.

The Virgins cite section 66412.6 for the proposition that the parcels created by the federal patents are conclusively presumed to be lawfully created.[3] But the county is not contesting the lawfulness of the parcels' creation. That is

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[3] Section 66412.6 provides in part: "(a) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if the parcel resulted from a division of land in which fewer than five parcels ere created and if at the time of the creation of the parcel, there was no local ordinance in effect which regulated divisions of land creating fewer than five parcels.

because the conveyances are inconsistent with the patents' continuing existence as legal parcels.

The Virgins' citation to *Packer v. Bird* (1891) 137 U.S. 661,669 [11 S.Ct. 210, 211, 34 L.Ed 819, 821] is not helpful to them. There the court stated, "whatever incidents or rights attach to the ownership of property conveyed by the [federal] government will be determined by the states, subject to the condition that their rules do not impair the efficacy of the grants, or the use and enjoyment of the property, by the grantee." The Virgins claim that the county is impairing their use and enjoyment of the property.

But the court decided *Packer* in the context of an action for possession of lands allegedly embraced by a federal patent. The words "use and enjoyment of the property" refer simply to the general right of possession. The court was not suggesting that one who takes under a federal patent has the right to use or divide his land in a manner that is inconsistent with local law. As the court stated in *Oneida Indian Nation of N. Y. State v. County of Oneida, New York* (1974) 414 U.S. 661,676 [94 S.Ct. 772, 782, 39 L.Ecl.2d 73, 84]: "Once patent issues, the incidents of ownership are, for the most part, matters of local property law . . . . " Here the county is not contesting the Virgins' title or right to possession of any of the land conveyed by federal patent. *Packer* simply does not apply.

[¶] (b) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if any subsequent purchaser acquired that parcel for valuable consideration without actual or constructive knowledge of a violation of this division or the local ordinance."

The Virgins' reliance on section 66451.10, subdivision (a), is also misplaced. That section provides that lawfully created parcels "shall not be deemed merged by virtue of the fact that the contiguous parcels or units are held by the same owner . . . ." But here the parcels are not deemed merged by virtue of their being held by the same owner. To the extent there is any merger it is because the owners made conveyances that are inconsistent with the continuing legal existence of any parcels but the two approved by the certificates of compliance.

We conclude the county was correct in its position that the Virgins' property consists of only two legal parcels. Because the Virgins' causes of action for damages were premised on the theory that they had the right to a lot line adjustment showing eight parcels, the trial court's grant of summary judgment in favor of the county was necessarily correct. It need not discuss the specifics of each cause of action.

The judgment granting the writ of mandate is reversed. In all other respects the judgment is affirmed. Costs on appeal are awarded to the county.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Kenneth Andreen, Judge*

Superior Court County of San Luis Obispo

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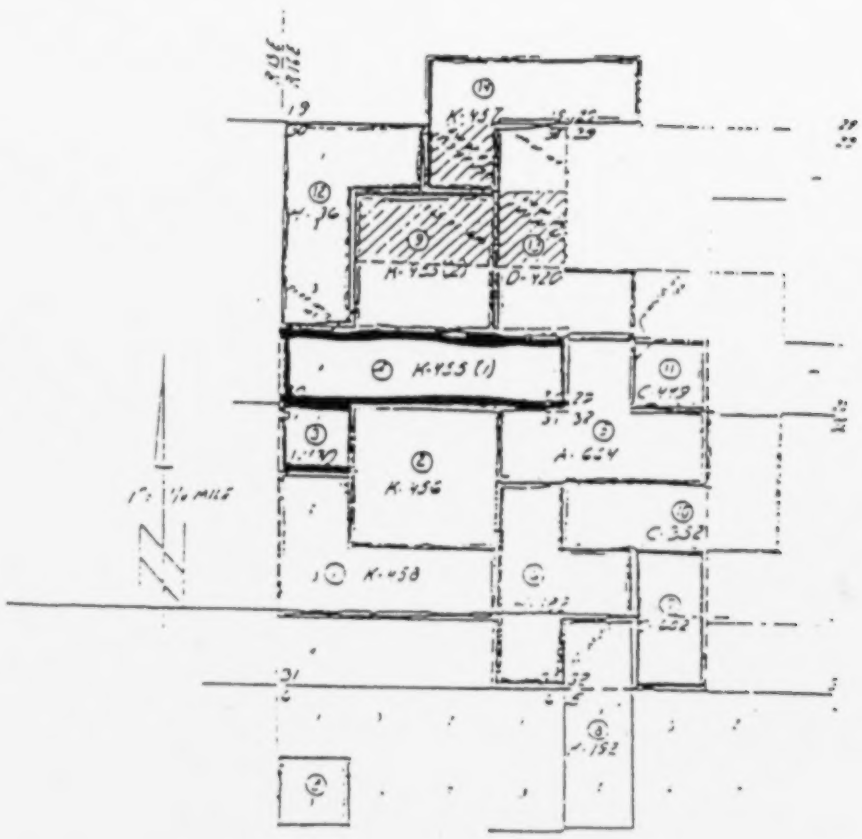
* Retired Associate Justice, Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX C

[Fold out]



1	K-458	SAGE	132.70	
2	K-456	YELLOW	140.00	
3	J-138	BLACK	38.00	
4	K-455(1)	GREEN	159.12	
5	A-624	LT. BLUE	140.00	
6	K-457	RED	140.00	
7	C-432	BROWN	28.00	
8	K-152	ORANGE	211.00	
9	K-454(1)	VIOLET	140.00	
10	C-352	AQUA GRN	140.00	
11	C-443	GRN SAGE	42.00	
12	K-36	PINK	158.92	
13	D-420	PEACH	140.00	
14	K-457	GRAY	140.00	

EXHIBIT A

PAGE 1 OF 1

APPENDIX D

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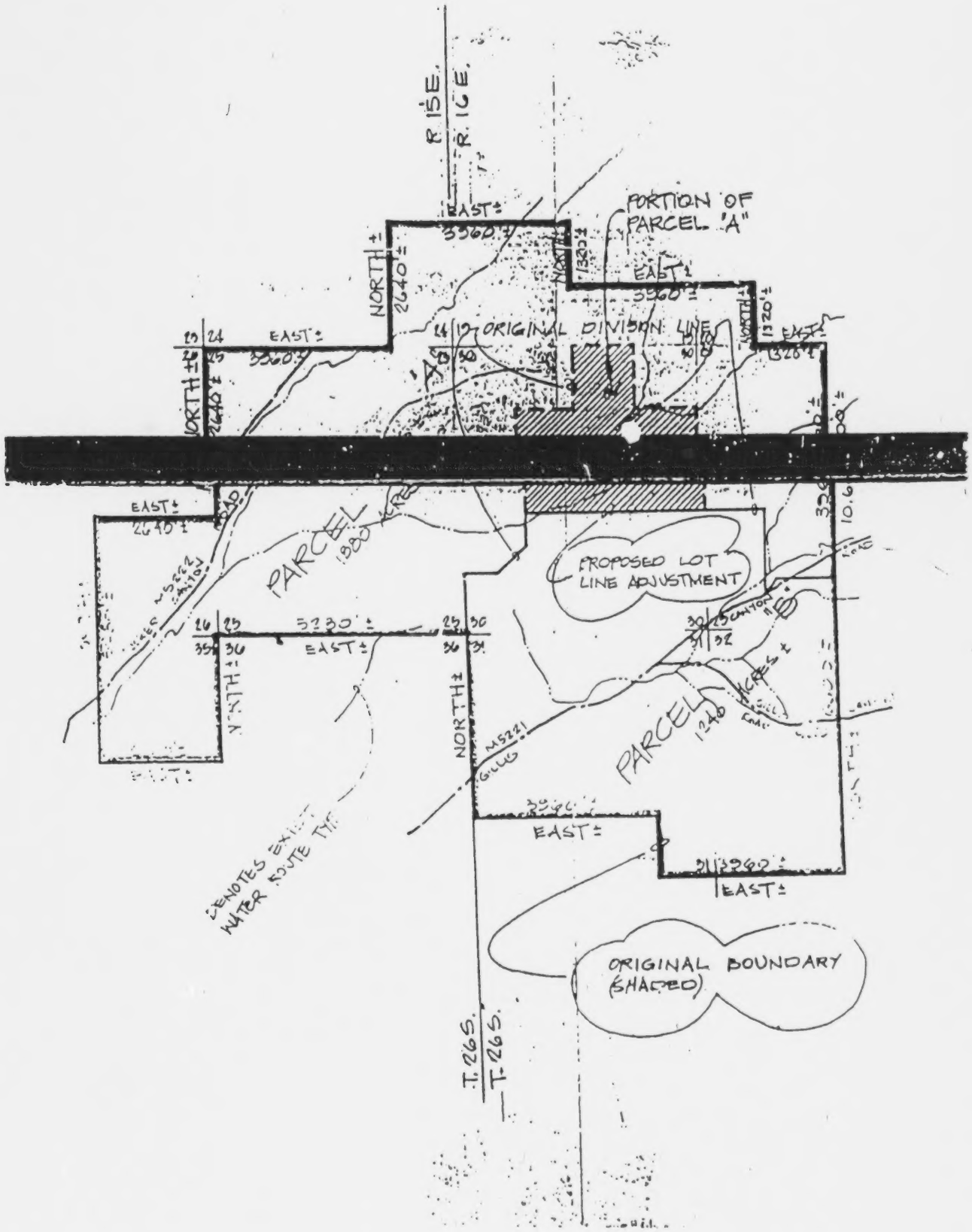
BEST AVAILABLE COPY



APPENDIX E

[Fold out]

PROJECT
COAL 93-102
VIRGIN/STEWART

EXHIBIT
PREVIOUS MAP
COAL 72-337

12½

PARCEL MAP

CO-AL-72-337

BEING A DIVISION OF SECTION 25 AND PORTIONS OF SECTIONS 24, 26, AND 35, T.10S., R.15E., M.D.M., AND ALSO BEING A DIVISION OF SECTION 30 AND PORTIONS OF SECTIONS 19, 20, 29, 31 AND 32, T.10S., R.16E., M.D.M., COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

NOTE: THIS IS ALSO A LOT LINE ADJUSTMENT BETWEEN PROPERTY SHOWN HEREON.

SURVEYOR'S CERTIFICATE:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND WAS COMPILED FROM RECORD DATA ~~SHOWN OR FIELD SURVEY~~ IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT ON NOV. 16, 1972. I HEREBY CERTIFY THAT IT CONFORMS TO THE APPROVED TENTATIVE MAP AND CONDITIONS OF APPROVAL THEREOF, THAT ALL PROVISIONS OF APPLICABLE STATE LAW AND LOCAL ORDINANCES HAVE BEEN COMPLIED WITH, AT THE REQUEST OF ROBERT STRAHAN.

DANIEL J. STEWART R.C.E. 14984

COUNTY SURVEYOR'S CERTIFICATE:

THIS MAP HAS BEEN EXAMINED FOR CONFORMANCE WITH THE REQUIREMENTS OF SECTION 11575 OF THE SUBDIVISION MAP ACT THIS 12TH DAY OF Dec., 1973.

COUNTY SURVEYOR R.C.E. 10197

COUNTY RECORDER'S CERTIFICATE:

FILED THIS 14TH DAY OF December, 1973, AT 2:38 P.M., IN BOOK 13 OF PARCEL MAPS AT PAGE 28 AT THE REQUEST OF DANIEL J. STEWART.

FEE: Free DOCUMENT NO.: 10110

WILLIAM E ZIMARIK
COUNTY RECORDER
BY: [illegible] Deputy

COUNTY PLANNING COMMISSION:

THIS PARCEL MAP, WHEREON THIS CERTIFICATE IS ENDORSED, IS HEREBY APPROVED BY THE PLANNING COMMISSION OF THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA IN ACCORDANCE WITH THE PROVISIONS OF SECTION 11535 (d) OF THE SUBDIVISION MAP ACT, BUSINESS AND PROFESSIONS CODE OF THE STATE OF CALIFORNIA, WITNESS MY HAND THIS 14th DAY OF December, 1973.

CHAIRMAN — SECRETARY

DANIEL J. STEWART & ASSOC.

ADDRESS: 331 12TH. STREET
P.O. BOX 2038
PASO ROBLES, CALIF.

#72206

T.10S R.15E.

T.10S R.16E.

T.26. R.15E.

T.27S. R.16E.

"A"

"B"

PARCEL
(THIS PARCEL DOES NOT CLOSE MATHEMATICALLY)
1140/OR/190, 807/OR/340, 1403/OR/630,
1140/OR/642, 1705/OR/736

PARCEL
1555 AC.
(THIS PARCEL DOES NOT CLOSE MATHEMATICALLY)

ORIGINAL DIVISION LINE (DASHED)

ADJUSTMENT LINE

APPROX. LOCATION ONLY OF EXIST. SHALE TYP.

APPROX. LOCATION ONLY

VICINITY MAP
NO SCALE

SITE

HWY 46

SAN LUIS OBISPO

FD. CO MON. NO. 16 FOR VERTICAL CONTROL

NOTE: All Dimensions shown hereon are based on GEO Values of ground solution combined therefrom, unless noted otherwise.

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING & BUILDING